

**IT 02-11**

**Tax Type: Income Tax**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE,**

Taxpayer

No. 02-IT-0000  
SSN: 000-00-0000  
TYE: 12/31/99

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** David Dorner, Senior Attorney, Income Tax for the Illinois Department of Revenue; JOHN DOE appeared *pro se*.

**SYNOPSIS:**

This matter arose following the protest of a Notice of Deficiency (“NOD”) issued by the Illinois Department of Revenue (“Department”) on December 17, 2001 to JOHN DOE (“taxpayer”) for the 1999 tax year. The Department issued the NOD and assessed penalties under Section 3-3(a-5) of the Uniform Penalty and Interest Act (“UPIA”)<sup>1</sup> for failure to file a personal income tax return for the year in question. Prior to the hearing

date, taxpayer chose to file an IL-1040 for the 1999 tax year with the Department. The May 1, 2002 hearing was continued until June 12, 2002 without objection by the taxpayer to allow the Department time to review and process the taxpayer's filed tax return. The Department prepared an EDA-24, auditor's report which agreed with the taxpayer's calculation of tax due on his filed tax return. As a result of these actions, the only issue that remains in dispute is whether the penalty assessed against the taxpayer in the NOD should be abated due to reasonable cause under Section 3-8 of the Uniform Penalty and Interest Act. A hearing was held on June 12, 2002 whereat the parties had the opportunity to present evidence to support their respective positions. After reviewing the administrative record in this matter, it is my recommendation that the penalty should be finalized.

**FINDINGS OF FACT:**

1. The Department established its *prima facie* case, inclusive of all jurisdictional elements, by the admission of the Notice of Deficiency dated December 17, 2001 for the 1999 tax year. The NOD assessed tax of \$810 and a late-filing penalty of \$266. Dept. Ex. No. 1.
2. Taxpayer filed a 1999 IL-1040 after the pre-hearing conference in this matter was held but prior to the hearing originally set for May 1, 2002. Tr. *passim*.
3. The Department's EDA-24, auditor's report revised the determination of tax as stated on the NOD dated December 17, 2001. The determination of tax due on the

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<sup>1</sup> 35 ILCS 735/3-3(a-5)

EDA-24 is in agreement with the taxpayer's determination of tax due on his filed 1999 IL-1040. The EDA-24 also assessed the penalty as stated on the original NOD and reflects interest calculated through June 12, 2002. Dept. Ex. No. 2.

4. On May 27, 2002, the Department sent taxpayer an ITR-76, which constitutes a bill for the \$265.22 late filing penalty reflected on the both the original NOD and the EDA-24. Taxpayer Ex. No. 1; Dept. Ex. Nos. 1-2. Taxpayer Ex. No. 1. p. 2.

### **CONCLUSIONS OF LAW:**

Taxpayer's responsibility for paying his Illinois individual income tax and filing a tax return is found in articles 2 and 5 of the Illinois Income Tax Act ("IITA"). 35 **ILCS** 5/201 *et seq*; 35 **ILCS** 5/501 *et seq*. Specifically, Section 201 provides that "[a] tax measured by net income is hereby imposed on every individual, ... for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. ..." Further, Section 502 of the IITA mandates that a taxpayer must file a tax return with the state of Illinois for the tax year in question.

The Department issued a NOD to taxpayer for failure to file an IL-1040 for 1999. In addition to determining the tax owed by the taxpayer, the Department assessed a penalty pursuant to Section 3-3(a-5) of the UPIA, 35 **ILCS** 735/3-1 *et seq.*, which assesses a penalty for failure to file the tax return on or before the due date prescribed for filing. Taxpayer timely protested the NOD and requested an administrative hearing. Before the original May 1, 2002 hearing date, the taxpayer chose to file a 1999 IL-1040

with the Department and reported a net income of \$25,353 for 1999. Thereafter, the Department's technical review unit prepared an EDA-24, auditor's report which reflected the net income as reported by the taxpayer on his filed tax return. On its EDA-24 report, the Department gave the taxpayer credit for the Illinois income tax withheld throughout the 1999 tax year, gave credit for property tax paid, and assessed the late-filing penalty as assessed on the original NOD. As a result, the only issue that remains in dispute is whether the late-filing penalty should be affirmed or whether it should be abated due to reasonable cause under Section 3-8 of the UPIA, 35 **ILCS** 735/3-8.

At hearing, the Department established the *prima facie* correctness of its determination that the penalty should be imposed when it introduced the NOD under the certificate of the Director. 35 **ILCS** 5/904(a); Dept. Ex. No. 1. Thereafter, the burden shifted to the taxpayer to establish that the penalty should be abated due to reasonable cause. Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1<sup>st</sup> Dist. 1981).

A determination as to whether reasonable cause exists must be made on a case by case basis taking into account all of the facts and circumstances. 86 Admin. Code ch. I, Sec. 700.400(b). Section 700.400(b) indicates that it must be determined to what extent the taxpayer made a good faith effort to determine the correct tax liability and to file and pay his proper liability in a timely fashion and subsection (c) provides that a taxpayer is considered to have made a good faith effort if he uses ordinary business care and prudence. Factors which are considered in determining whether the taxpayer exercised ordinary business care and prudence are the clarity of the law and its interpretation, and

the taxpayer's education, experience and knowledge. *Id.* Depending on the facts and circumstances of the case, reliance on the advice of a tax professional may or may not establish that taxpayer exercised ordinary business care and prudence and justify an abatement of penalty. 86 Ill. Admin. Code ch. I, sec. 700.400(c).

At hearing, taxpayer argued that he should not be required to pay the late-filing penalty in question, however, the taxpayer did not present any testimony or documentary evidence which explained why he failed to timely file his 1999 Illinois income tax return. Thus, nothing in the administrative record indicates that an abatement of penalty is warranted. As such, the taxpayer has not overcome the *prima facie* correctness of the Department's NOD and the penalty should be affirmed.

Accordingly, the Notice of Deficiency as revised by the EDA-24 auditor's report, Dept. Ex. No. 2. is hereby finalized.

Date: July 5, 2002

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Christine O'Donoghue  
Administrative Law Judge